

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09	JAMES BATTLE,	)	CASE NO. C05-1365-TSZ-MAT
10	Plaintiff,	)	
11	v.	)	REPORT AND RECOMMENDATION
12	STATE OF WASHINGTON, et al.,	)	
13	Defendants.	)	

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Plaintiff presented to this Court for filing a proposed civil rights complaint under 42 U.S.C. § 1983. (Dkt. 1.) In the case caption, plaintiff names the “State of Washington; Department of Corrections” and “Reynolds Work Release” as defendants. In the body of the complaint, plaintiff also lists Debra Holly, Chris Baker, Tonya Wick, and West Central Records Office as defendants. The proposed complaint raises issues regarding plaintiff’s confinement by the Department of Corrections. He seeks release from custody and monetary relief. Plaintiff also presented an application to proceed *in forma pauperis*. (Dkt. 1.) However, as discussed below, the Court recommends that plaintiff’s application to proceed *in forma pauperis* be denied and this action dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) based upon plaintiff’s failure to adequately allege a cause of action under § 1983.

Where a prisoner challenges the fact or duration of his confinement, his sole federal remedy is a writ of habeas corpus, to which the exhaustion requirement applies. *Preiser v. Rodriguez*, 411

01 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990). Further, in *Heck*  
02 *v. Humphrey*, the United States Supreme Court held as follows:

03 [I]n order to recover damages for allegedly unconstitutional conviction or  
04 imprisonment, or for other harm caused by actions whose unlawfulness would render  
05 a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or  
06 sentence has been reversed on direct appeal, expunged by executive order, declared  
07 invalid by a state tribunal authorized to make such determination, or called into  
08 question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.  
09 A claim for damages bearing that relationship to a conviction or sentence that has *not*  
10 been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks  
11 damages in a § 1983 suit, the district court must consider whether a judgment in favor  
12 of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if  
13 it would, the complaint must be dismissed unless the plaintiff can demonstrate that the  
14 conviction or sentence has already been invalidated.

10 512 U.S. 477, 486-87 (1994) (footnote omitted).

11 Here, plaintiff's assertion that the named defendants violated his constitutional rights by  
12 unlawfully incarcerating him constitutes a challenge to the fact and/or duration of his confinement  
13 – a challenge properly pursued through a writ of habeas corpus. *See Preiser*, 411 U.S. at 489-90.  
14 Therefore, plaintiff's § 1983 claim must be dismissed unless he can demonstrate that his conviction  
15 or sentence has already been invalidated. *Heck*, 512 U.S. at 486-87. Here, plaintiff makes no  
16 allegation or showing that his confinement has been invalidated or impugned in any respect.  
17 Accordingly, plaintiff's claim for damages is not cognizable under § 1983.<sup>1</sup> *Heck*, 512 U.S. at  
18 486-87.

19 A district court should not convert a defective § 1983 claim into a petition for a writ of  
20 habeas corpus unless it is clear that the plaintiff intends to bring a habeas petition. *Trimble v. City*  
21 *of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995). Instead, the district court should dismiss the  
22 § 1983 claims without prejudice. *Id.*

23 Therefore, the Court recommends that plaintiff's application to proceed *in forma pauperis*  
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25 <sup>1</sup> It should also be noted that plaintiff may not bring a claim against the State of  
26 Washington under 42 U.S.C. § 1983 because states are not regarded as "persons" subject to suit  
under that statute. *See, e.g., Hale v. Arizona*, 993 F.2d 1387, 1398 (9th Cir. 1993).

01 be denied and his § 1983 action be dismissed without prejudice pursuant to § 1915(e)(2)(B). A  
02 proposed order accompanies this Report and Recommendation.

03 DATED this 8th day of August, 2005.

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06 Mary Alice Theiler  
07 United States Magistrate Judge  
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